

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANE SIMKINS, an incapacitated person, by)	
her guardian, Kristi Simkins; KRISTI)	
SIMKINS and PATRIC ROGERS; and)	No. 2:23-cv-00578
CHRISTER PERSSON,)	
Plaintiffs,)	STIPULATION AND
v.)	PROTECTIVE ORDER
NEW YORK LIFE INSURANCE COMPANY,)	
Defendant.)	

Plaintiffs, through their counsel, and Defendant New York Life Insurance Company, through its counsel (“NYL” or “Defendant”), hereby stipulate and agree to the entry of the following Protective Order regarding the Confidential Information more particularly described below.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Requested discovery in this matter include Plaintiff Diane Simkins’ medical records and NYL’s business records. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery,

STIPULATION AND PROTECTIVE ORDER - 1 No. 2:23-cv-00578

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WA 98111-9402
206.223.7000 FAX: 206.223.7107

1 the protection it affords from public disclosure and use extends only to the limited information
 2 or items that are entitled to confidential treatment under the applicable legal principles, and it
 3 does not presumptively entitle parties to file confidential information under seal.

4
 5 2. “CONFIDENTIAL” MATERIAL

6 “Confidential” material shall include the following documents and tangible things
 7 produced or otherwise exchanged:

- 8 A. Social security numbers (5 U.S.C. § 552a(b)); LCR 5.2a(3));
- 9 B. Personal information in files maintained for clients of public institutions or welfare
 10 recipients (42 U.S.C. § 671(a)(8); Wash. Rev. Code 42.56.230(1); Wash. Rev.
 11 Code 74.04.060);
- 12 C. Health care information (Wash. Rev. Code 70.02.010 (16));
- 13 D. Credit card numbers, debit card numbers, electronic check numbers, card expiration
 14 date, bank, or other financial account numbers. LCR 5.2(a)(4).
- 15 E. Personal communications and information contained in social media data disclosed
 16 through discovery, and which data is not publicly available information;
- 17 F. Employee personnel records or other sensitive personnel information, such as payroll
 18 records, wage and salary information, employee evaluations and training materials,
 19 and investigation files;
- 20 G. Non-public, proprietary business information (including trade secrets, competitive
 21 and strategic initiatives) when such information is not readily ascertainable outside of
 22 this litigation and which the designating party has taken reasonable steps to maintain
 23 its confidentiality.
- 24
- 25
- 26
- 27

1
2 3. SCOPE

3 The protections conferred by this agreement cover not only confidential material (as
4 defined above), but also (1) any information copied or extracted from confidential material; (2)
5 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
6 conversations, or presentations by parties or their counsel that might reveal confidential
7 material.

8 However, the protections conferred by this agreement do not cover information that is
9 in the public domain or becomes part of the public domain through trial or otherwise.
10

11 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12 4.1 Basic Principles. A receiving party may use confidential material that is
13 disclosed or produced by another party or by a non-party in connection with this case only for
14 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
15 disclosed only to the categories of persons and under the conditions described in this agreement.
16 Confidential material must be stored and maintained by a receiving party at a location and in a
17 secure manner that ensures that access is limited to the persons authorized under this agreement.
18

19 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
20 ordered by the court or permitted in writing by the designating party, a receiving party may
21 disclose any confidential material only to:

22 (a) the receiving party's counsel of record in this action, as well as
23 employees of counsel to whom it is reasonably necessary to disclose the information for this
24 litigation;
25

26 (b) the officers, directors, and employees (including in house counsel) of the
27 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for
4 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
5 (Exhibit A);
6

7 (d) the court, court personnel, and court reporters and their staff;

8 (e) copy or imaging services retained by counsel to assist in the duplication
9 of confidential material, provided that counsel for the party retaining the copy or imaging
10 service instructs the service not to disclose any confidential material to third parties and to
11 immediately return all originals and copies of any confidential material;
12

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
15 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
16 transcribed deposition testimony or exhibits to depositions that reveal confidential material
17 must be separately bound by the court reporter and may not be disclosed to anyone except as
18 permitted under this agreement;

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.
21

22 4.3 Filing Confidential Material. Before filing confidential material or discussing or
23 referencing such material in court filings, the filing party shall confer with the designating party
24 to determine whether the designating party will remove the confidential designation, whether
25 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
26 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
27

standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards and have a good faith believe that the documents or tangible items are to be designated confidential. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. Documents produced in a native format that contain confidential material must be labeled confidential in a manner appropriate to the type of document. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 2 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 4 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 5 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 6 original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 8 regarding confidential designations without court involvement. Any motion regarding
 9 confidential designations or for a protective order must include a certification, in the motion or
 10 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 11 conference with other affected parties in an effort to resolve the dispute without court action.
 12 The certification must list the date, manner, and participants to the conference. A good faith
 13 effort to confer requires a face-to-face meeting or a telephone conference.

14 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 15 intervention, the designating party may file and serve a motion to retain confidentiality under
 16 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 17 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 18 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
 19 other parties) may expose the challenging party to sanctions.

20 All parties shall continue to maintain the material in question as confidential until the
 21 court rules on the challenge.

22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 23 LITIGATION

24 If a party is served with a subpoena or a court order issued in other litigation that
 25 compels disclosure of any information or items designated in this action as
 26 "CONFIDENTIAL," that party must:

1 (a) promptly notify the designating party in writing and include a copy of
2 the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued
7 by the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
10 confidential material to any person or in any circumstance not authorized under this agreement,
11 the receiving party must immediately (a) notify in writing the designating party of the
12 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
13 protected material, (c) inform the person or persons to whom unauthorized disclosures were
14 made of all the terms of this agreement, and (d) request that such person or persons execute the
15 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
21 provision is not intended to modify whatever procedure may be established in an e-discovery
22 order or agreement that provides for production without prior privilege review. The parties
23 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

24 10. NON-TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the termination of this action, including all appeals, each receiving
26 party must return all confidential material to the producing party, including all copies, extracts
27 and summaries thereof. For documents produced in electronic form, each receiving party shall

delete the electronic information. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. All such material shall remain subject to the confidentiality obligations imposed by this agreement after the termination of this litigation.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: September 7, 2023

KELLER ROHRBACK LLP

LANE POWELL PC

By s/ Adam Rosenberg

By s/ Diane C. Babbitt

Adam Rosenberg, WSBA No. 39256
1207 3rd Ave. Suite 3200
Seattle, WA 98101-3052
Telephone: 206-623-1900
Email: arosenberg@kellerrohrback.com

Tim D. Wackerbarth, WSBA No. 13673
Andrew Yates, WSBA No. 34239
Diane C. Babbitt, WSBA No. 17956
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, Washington 98111-9402
Telephone: 206.223.7000
wackerbarth@lanepowell.com
yatesa@lanepowell.com
babbitt@lanepowell.com

RUIZ & SMART PLLC

William C. Smart, WSBA No. 8192
Isaac Ruiz, WSBA No. 35237
1200 Fifth Ave. Suite 1220
Seattle, WA 98101
Telephone: 206-203-9100
iruiz@ruizandsmart.com
wsmart@ruizandsmart.com

Attorneys for Defendant New York Life Insurance Company

Attorneys for Plaintiff

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Western District of Washington on [date]
in the case of *Simkins et al v. New York Life Insurance Company*, No. 2:23-cv-000578. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 29th day of September, 2023.



The Honorable JAMAL N. WHITEHEAD
United States District Court Judge